

Office of the Secretary of Defense

§ 286.16

the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the request will state that no records were found.

(h) *Number 8 (U.S.C. 552 (b)(8))*. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552(b)(9))*. Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General*. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public because disclosure would cause a foreseeable harm to an interest protected by one or more FOIA exemptions 2 through 9 (see subpart C of this part) shall be considered as being for official use only (FOUO). No other material shall be considered FOUO, and FOUO is not authorized as an anemic form of classification to protect national security interests. Additional information on FOUO and other controlled, unclassified information may be found in DoD 5200. 1-R or by contacting the Directorate for Security, Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence).

(b) *Prior FOUO application*. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether disclosure would result in a foreseeable harm to an interest protected by one or more FOIA exemptions 2 through 9. Even if any exemptions apply, the record shall be released as a discretionary matter when it is determined that there is no foreseeable harm to an interest protected by the exemptions.

(c) *Historical papers*. Records such as notes, working papers, and drafts retained as historical evidence of DoD

Component actions enjoy no special apart from the exemptions under the FOIA.

(d) *Time to mark records*. The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement*. Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24⁸ shall bear that statement and may be marked FOUO, as appropriate.

§ 286.16 Markings.

(a) *Location of markings*. (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any). Each paragraph containing FOUO information shall be marked as such.

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page. Individual paragraphs shall be marked at the appropriate classification level, as well as unclassified or FOUO, as appropriate.

(3) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the top and bottom of the page, as well as each paragraph that contains FOUO information.

(4) Other records, such as photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

⁸See footnote 1 to § 286.1(a).